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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

ROBERT JONES,

Plaintiff

v.

LINDA FOX, et al.,

Defendants

Case No.: 3:21-cv-00129-ART-CSD

**Report & Recommendation of  
United States Magistrate Judge**

Re: ECF No. 25

This Report and Recommendation is made to the Honorable Anne R. Traum, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Before the court is Plaintiff's motion to enforce settlement. (ECF No. 25.) Defendant filed a response. (ECF No. 26.) Plaintiff filed a reply. (ECF No. 27.)

After a thorough review, it is recommended that Plaintiff's motion be denied.

**I. BACKGROUND**

Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC), proceeding pro se with this action pursuant to 42 U.S.C. § 1983. (First Amended Complaint (FAC), ECF No. 8.)

The court screened Plaintiff's FAC, and allowed him to proceed with a single claim of deliberate indifference to a serious medical need under the Eighth Amendment against Dr. Martin Naughton based on allegations that Dr. Naughton did not adequately manage Plaintiff's hip pain. (ECF No. 7.)

The court referred this matter to its early mediation program, and a mediation session was held on May 17, 2022. The minutes from the mediation reflect that a settlement was reached, the

1 terms of the agreement were stated on the record, and the agreement was reduced to writing and  
2 signed by all parties at the mediation. (ECF No. 17.) A stipulation for dismissal of the action  
3 with prejudice was filed on July 7, 2022 (ECF No. 23), and an order dismissing the case with  
4 prejudice was entered by District Judge Traum on July 11, 2022 (ECF No. 24).

5 Plaintiff filed this motion to enforce the settlement agreement on July 14, 2022. (ECF No.  
6 25.)

## 7 II. DISCUSSION

8 Plaintiff attaches a copy of the settlement agreement, which states that NDOC agreed to  
9 provide Plaintiff with an expedited appointment (within 14 days) with NDOC medical personnel  
10 to discuss scheduling his colonoscopy and left knee surgical procedure, and further agreed to  
11 reserve Plaintiff's current housing situation for one week following the surgical procedure on his  
12 left knee. NDOC also agreed to pay Plaintiff \$100, to be deposited in his Trust 2 account. In  
13 exchange, Plaintiff signed a stipulation for dismissal of this action. NDOC agreed to comply with  
14 the terms of the agreement within 30 days of its signing, but Plaintiff was required to wait an  
15 additional 30 days after that deadline to file any motion to enforce the agreement. (ECF No. 25 at  
16 7-8.)

17 Plaintiff asserts that John Keast told him on May 24, 2022, that he called Reno  
18 Orthopedic and Gastroenterology Consultants for appointments, per the terms of the agreement.  
19 Plaintiff had his wife and nephew call those facilities to ask if they had been contacted for an  
20 appointment, and both said they had not been contacted for appointments for Plaintiff.

21 Defendant argues Plaintiff's motion should be denied as premature, because as Plaintiff  
22 acknowledges, the agreement provides that Plaintiff must wait 30 days *after* the 30-day deadline  
23 for Defendant's compliance to file any motion to enforce the settlement agreement.

1 In addition, Defendant argues that NDOC has complied with the agreement. The  
2 agreement provided, among other things not relevant to this motion, that Plaintiff be provided  
3 with an expedited appointment (within 14 days) to discuss scheduling his colonoscopy and left  
4 knee surgical procedure. Defendant points out that the agreement did not provide that the  
5 appointments would in fact be scheduled, or that they would be scheduled within 30 days.  
6 Defendant notes that NDOC is actively attempting to schedule appointments for Plaintiff's  
7 colonoscopy and knee surgery, but as of the time of the filing of their opposition, they were  
8 unable to schedule the appointments. (Dorame Decl., ECF No. 26-1.)

9 First, in *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375  
10 (1994), the Supreme Court held that federal courts do not have inherent or ancillary jurisdiction  
11 to enforce a settlement agreement merely because the subject of the settlement was a federal  
12 lawsuit. *Kokkonen*, 511 U.S. at 381. Unless the court's retention of jurisdiction is expressly made  
13 a part of the settlement agreement and order of dismissal, and absent another independent basis  
14 for jurisdiction, a motion to enforce a settlement agreement is an action for breach of contract  
15 that should be filed in state court. *Id.*

16 Here, the settlement agreement provides that the court retains jurisdiction over this matter  
17 for purposes of enforcing the settlement agreement "*until the stipulation to dismiss is granted,*"  
18 and "*[u]pon dismissal of this action, the District Court will no longer have jurisdiction over this*  
19 *case.*" (ECF No. 25 at 8, emphasis added.) District Judge Traum entered the order dismissing  
20 this action with prejudice on July 11, 2022, terminating this court's jurisdiction. Plaintiff has not  
21 provided an independent basis for jurisdiction. Therefore, Plaintiff's motion to enforce the  
22 settlement agreement should be denied for lack of jurisdiction.  
23

1 Even if the court had jurisdiction over this motion, the court agrees that Plaintiff's motion  
2 is premature under the express terms of the agreement, which required Plaintiff to wait until at  
3 least July 16, 2022, to file a motion to enforce the settlement agreement (30 days from the May  
4 17, 2022 signing, plus an additional 30 days). Plaintiff's motion was filed on July 14, 2022.  
5 Plaintiff's motion should be denied on this additional basis.

### 6 **III. RECOMMENDATION**

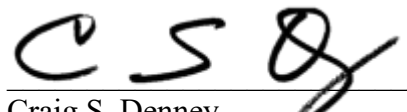
7 IT IS HEREBY RECOMMENDED that the District Judge enter an order **DENYING**  
8 Plaintiff's motion to enforce the settlement agreement (ECF No. 25).

9 The parties should be aware of the following:

10 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to  
11 this Report and Recommendation within fourteen days of being served with a copy of the Report  
12 and Recommendation. These objections should be titled "Objections to Magistrate Judge's  
13 Report and Recommendation" and should be accompanied by points and authorities for  
14 consideration by the district judge.

15 2. That this Report and Recommendation is not an appealable order and that any notice of  
16 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed  
17 until entry of judgment by the district court.

18  
19 Dated: November 28, 2022

20   
21 Craig S. Denney  
22 United States Magistrate Judge  
23